IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4430 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALBHADRAJANARDANPRASADVAISHNAV - Petitioner(s)

Versus

STATEOFGUJARAT & 2 - Respondent(s)

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Appearance :

MR RAMKRISHNA B DAVE for Petitioner(s) : 1,
MR LB DABHI Ld. AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 05/10/2005

ORAL JUDGMENT

1. Rule. Learned AGP Mr.Dabhi waives service of notice of rule on behalf of respondents.

2. The petitioner, who was working in the Regional

Transport Office, retired on 31st July,1992 as a Regional Transport Officer (Class-I), Ahmedabad. When he retired, a No Due Certificate also came to be issued in his favour upon his paying Rs.2600.20 paise as he was called upon so to do. However, while paying the retiral dues, an amount of Rs.55,000/- was not paid to him from his gratuity amount. He, therefore, made several representations and was informed that certain diaries in respect of official tours that he made made and on basis of which, he had claimed permanent travel allowance were not available (traceable) in the office and the amount remained unpaid. The petitioner was, therefore, required to prefer this petition with following prayers:

(A) Your Lordships be pleased to admit and allow this petition;

(B) Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent to finalize the pension of the petitioner forthwith and further be pleased to direct the respondents to pay pensionary benefits and pension with interest to the petitioner.

(C) Pending admission, hearing and final

disposal of this petition, Your Lordships be pleased to finalize the pension of the petitioner forthwith and further be pleased to direct the respondents to pay pensionary benefits and pension amount with interest to the petitioner.

(D) to pass such other and further orders necessary in the interest of justice.

3. Learned Advocate Mr.Dave appearing for the petitioner indicated that the amount was withheld by the respondent authorities without any notice and without any opportunity to the petitioner to know and explain the factors treated as adverse to the petitioner by the respondent side. Learned Advocate Mr.Dave, however, submitted that during the pendency of this petition, an amount of Rs.50,000/- has been paid to the petitioner and now only an amount of Rs.5000/- remains to be paid to the petitioner. There is no dispute on pension.

3.1 Learned Advocate Mr.Dave submitted that the respondent authorities have come with a story in their affidavit-in-reply that an amount of Rs.5962/- is required to be paid by the petitioner on account of use of telephone No.421242 given to him in excess of free

calls available on rent. Mr.Dave submitted that even for this, the case of the respondent is not well founded. Respondent No.2, after being satisfied that the petitioner has used his personal telephone connection for his personal calls and used the Government telephone only for Government purpose, made a recommendation and request to respondent No.1 to obtain permission from GAD to treat the said amount of Rs.5963.30 paise as Government expenses and absolve the petitioner from paying the same and finalize the payment of retiral dues. Mr.Dave, therefore, submitted that this petition may be allowed.

4. The petition is opposed to by learned AGP Mr.Dabhi. Relying on the affidavit-in-reply, he submitted that the telephone was used by the petitioner in excess of free calls available and, therefore, an amount of Rs.5962.30 paise is payable by the petitioner. As against that, Rs.5000/- is withheld by the respondent authorities. An amount of Rs.50,000/- has already been paid and, therefore, the petition may be dismissed.

5. The petitioner retired as Regional Transport Officer (Class-I) in the year 1992 and he is running from pillar to post for his retiral dues till today. Undisputely, without any notice or audience being given to him, an

amount of Rs.55,000/- was withheld until the petition was filed initially on the ground that certain diaries were not available in the office. Despite several representations, no heed was paid to the petitioner's request. It is not controverted that the permanent travelling allowance (PTA) is paid only after verification of diaries and if that be so, it has to be inferred that PTA was paid to the petitioner after due verification. If those diaries are not available after retirement of the petitioner, he could not have been hauled up for that purpose and cannot be denied his retiral dues. Fortunately, now that stand is given up by the respondent authorities and an amount of Rs.50,000/- has been paid to the petitioner.

5.1 Unfortunately, a stand appears to have been taken in respect of use of official telephone by the petitioner in excess of free calls available on rent, probably on presumption that, that use was for his personal work.

5.2 The petitioner retired in 1992 and his immediate superior – respondent No.2 has written a letter to respondent No.1 on 3rd May,2001 indicating that the petitioner had his personal telephone connection at his residence and that was being used for his personal work

and, therefore, considering the factors indicated by the petitioner, respondent No.2 recommended that amount of Rs.5962.30 paise permitted to be treated as Government expenditure.

5.3 It would also be appropriate to note that there is no material, except a presumption, to show that calls made in excess of permissible 450 calls were made for private use by the petitioner. Considering office that the petitioner was holding, in absence of any statistics, presumption cannot be drawn that the calls made in excess of 450 calls were for his personal use, particularly when respondent No.2 himself has accepted the explaination of the petitioner regarding his having taken a personal phone connection for his personal use and recommended to treat the expenditure as Government expenditure.

6. Under the circumstances, the stand taken by the respondent authorities is not legal or well founded and is without any basis. There is no material to show that the calls in excess of 450 were not official calls. Burden of official phone cannot be fastened on the petitioner, if there is no material to support such an action. On the contrary, respondent No.2 has recommended to treat Rs.5932.30 paise as Government expenditure. The

petition, therefore, deserves to be allowed and is accordingly allowed. The respondent authorities are directed to pay the outstanding amount of retiral benefits to the petitioner forthwith and not to insist for recovery of Rs.932.30 paise as per affidavit-in-reply. Rule is made absolute. No costs.

(A.L.DAVE,J.)

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